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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR 4012
DATE COMPLAINT FILED: 07/20/94
DATE OF NOTIFICATION: 07/28/94
DATE ACTIVATED: 10/11/94
STAFF ATTORNEYS: Mark T. Kim
Caryn Zimmerman

COMPLAINANT:

Maureen Keenan

RESPONDENTS:

Frank G. Simon, M.D.
Freedom's Heritage Forum and
Arthur A. Cerminara, as treasurer
Hardy for Congress Committee and
Bob Ross, as treasurer
Lewis for Congress Committee and
Bob Ross, as treasurer

RELEVANT STATUTES:

2 U.S.C. § 434(a)(6)(A)
2 U.S.C. § 434(b)
2 U.S.C. § 434(c)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(a)(7)(B)(i)
2 U.S.C. § 441a(f)
2 U.S.C. § 441d(a)(3)

INTERNAL REPORTS CHECKED:

FEC Indices and Reports

FEDERAL AGENCIES CHECKED:

None

I. GENERATION OF MATTER

This matter arises from a complaint filed with the Federal Election Commission ("Commission") on July 20, 1994, against Frank G. Simon, M.D., the Freedom's Heritage Forum ("Forum") and Arthur A. Cerminara, as treasurer, alleging that expenditures reported by the Forum as independent were actually contributions to the Hardy for Congress Committee ("Hardy Committee").

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An amendment to the complaint was filed on October 11, 1994, similarly alleging that expenditures reported by the Forum as independent were actually contributions to the Lewis for Congress Committee ("Lewis Committee"). Notice of the original complaint was sent to Dr. Simon, the Forum and the Hardy Committee. Notice of the amendment to the complaint was sent to Dr. Simon, the Forum and the Lewis Committee. Responses have been received from all respondents except for the Hardy Committee.

II. FACTUAL AND LEGAL ANALYSIS

A. Statement of Law

The Federal Election Campaign Act of 1971, as amended (the "Act"), provides the definition of a contribution and establishes dollar limits on contributions to candidates for federal office. Under the Act, an expenditure made by an individual "in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate".¹ 2 U.S.C. § 441a(a)(7)(B)(i). Thus, any arrangement, coordination, or direction by the candidate or candidate's agent prior to an expenditure being made would cause the expenditure to qualify as a contribution. 11 C.F.R. § 109.1(b)(4)(i). Moreover, a presumption of coordination arises when an expenditure is "[b]ased upon information about the

1. The Act defines an independent expenditure as "an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, . . . and which is not made in concert with, or at the request or suggestion of, any candidate". 2 U.S.C. § 431(17).

candidate's plans, projects, or needs provided to the expending person by the candidate, or by the candidate's agents, with a view toward having an expenditure made". 11 C.F.R. § 109.1(b)(4)(i)(A).

Coordinated expenditures result in several reporting obligations on behalf of both the donor, when it is a reporting entity, and the recipient-committee. The donor must disclose the expenditure as a contribution, the date and amount of such contribution and, in the case of a contribution to an authorized committee, the candidate's name and office sought. 2 U.S.C. § 434(b)(4)(H)(i); 11 C.F.R. § 104.3(b)(3)(v). The recipient-committee must disclose the expenditure as an in-kind contribution, the identity of the donor and the year-to-date aggregate total for such donor. 2 U.S.C. § 434(b)(2)(D); 11 C.F.R. § 104.3(a)(4). Further, the recipient-committee must report any contribution in excess of \$1,000 received after the 20th day, but more than 48 hours before the day of an election, within 48 hours of its receipt. 2 U.S.C. § 434(a)(6)(A); 11 C.F.R. § 104.5(f).

Independent expenditures also result in several reporting obligations on behalf of the donor. The donor must report any independent expenditure in excess of \$1,000 made after the 20th day, but more than 24 hours before the day of an election, within 24 hours of its being made. 2 U.S.C. § 434(c)(2); 11 C.F.R. § 104.4(b). Further, the donor must certify under penalty of perjury that these expenditures were not made "in cooperation, consultation or concert with, or at the request or suggestion of

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any candidate or any authorized committee or agent thereof."

2 U.S.C. § 434(b)(6)(iii); 11 C.F.R. § 104.3(b)(3)(vii)(B).

Under the Act, a "person" may not contribute to a candidate and the authorized committee of the candidate more than \$1,000 per election.² 2 U.S.C. § 441a(a)(1)(A). Further, political committees must disclose the identity of each person who makes a contribution to the committee in excess of \$200 within the calendar year. 2 U.S.C. § 434(b)(3)(A). Finally, neither a candidate nor a political committee may knowingly make or accept a contribution or expenditure that is in violation of the provisions of the Act. 2 U.S.C. § 441a(f).

Any person who makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate must satisfy certain disclaimer requirements for those communications. 2 U.S.C. § 441d(a). For such a communication, the disclaimer must explicitly state both who paid for it and whether or not it was authorized by any candidate or campaign committee. 2 U.S.C. § 441d(a)(1)-(3).

Finally, a copy of each report and statement required to be filed under the Act must also be filed with the appropriate State officer who is charged by State law with maintaining State election campaign reports. 2 U.S.C. § 439(a)(1).

2. The Act defines a "person" as an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons. 2 U.S.C. § 431(11). Since the Forum does not qualify as a multicandidate committee under 11 C.F.R. § 100.5(e)(3), it is subject to the provisions that apply to a "person".

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B. Factual Background

1. Complaint

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The original complaint alleged that the Forum reported certain expenditures made in support of the Hardy campaign during the Republican primary of 1994 in the 3rd Congressional District of Kentucky as independent when, in fact, the expenditures qualified as contributions because of coordination between the Forum and the Hardy Committee. Congresswoman Susan Stokes defeated Mr. Hardy in the GOP primary election on May 24, 1994, and emerged with the Republican nomination.

The complaint further alleged disclaimer and reporting violations by the Forum in regard to these expenditures for certain tabloids prepared and distributed by the Forum in support of the Hardy campaign ("Hardy tabloids"). See Attachment 1 at 3-8. The complaint implied that the Forum committed these violations in an effort to conceal the fact that its reportedly "independent expenditures" were actually coordinated with the Hardy Committee and therefore in-kind contributions. The Forum reported spending \$22,738.81 in independent expenditures for the Hardy tabloids on the 1994 July Quarterly Report. Specifically, the complaint alleged that each of the Hardy tabloids failed to contain the proper disclaimer stating whether or not it was authorized by any candidate, the implication being that the Forum did not wish to admit that the Hardy Committee had authorized the expenditures on its behalf. The complaint also alleged that the Forum failed to certify under penalty of perjury on Schedule E of the 1994 July Quarterly Report that its expenditures for the Hardy

tabloids were not made "in cooperation, consultation or concert with, or at the request or suggestion of any candidate". Accordingly, the complaint alleged that the Forum made excessive contributions to the Hardy campaign. Finally, the complaint alleged that the Forum failed to file a copy of such reports and statements with the Kentucky Registry of Election Finance as was required by the Act.

The complaint concomitantly alleged that, if the expenditures were independent, then the Forum failed to file nine required 24-hour reports for those expenditures made in connection with the Hardy tabloids. Further, the complaint alleged that the Forum failed to itemize its receipts in excess of \$200 on Schedule A of the 1994 July Quarterly Report.³

In an amendment to the complaint, similar allegations of coordination were brought against the Forum with respect to its alleged support of the congressional campaign of Richard Lewis. Richard Lewis was an independent candidate in the general election on November 8, 1994, for the 3rd Congressional District of Kentucky. The amendment alleged that the Forum made certain expenditures for a tabloid in support of the Lewis campaign ("Lewis tabloid") and that the Lewis Committee subsequently distributed it to the general public. See Attachment 4. The Forum reported spending \$6,791.60 in expenditures for the general election on the 1994 October Quarterly, 12-Day Pre-General and

3. According to the 1994 July Quarterly Report, the Forum received a total of \$12,927.00 in contributions, all of which were unitemized.

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30-Day Post-General Election Reports. Accordingly, the amendment alleged that the coordinated distribution of the Lewis tabloid rendered the expenditures of the Forum for that tabloid in-kind contributions to the Lewis Committee. Consequently, the amendment alleged that the Forum misreported the expenditures as independent rather than as in-kind contributions and further alleged that the Forum made excessive contributions to the Lewis campaign.

2. Responses

a. Freedom's Heritage Forum

The Forum, its treasurer Mr. Cerminara, and its founder and president Dr. Simon ("Forum respondents") submitted joint responses to both the original complaint and the amendment to the complaint. See Attachments 2,3 & 5. The Forum respondents asserted generally that all their expenditures were independent. See Attachment 2. The responses to the allegations involving the Hardy Committee focused upon the technicalities of the alleged disclaimer and reporting violations.⁴ The Forum respondents asserted that they were not required to submit a Schedule A with the 1994 July Quarterly Report because no contributions in excess of \$200 requiring itemization were received, and further that the disclaimer notices on the Hardy tabloids were proper and in compliance with 11 C.F.R. § 110.11(a)(1)(iv). Id. The Forum respondents also asserted that they were unaware of what reports and statements had not been filed with the Kentucky Registry of

4. This Office notes that neither the Hardy Committee nor Mr. Ross, in his capacity as treasurer of that committee, responded to the complaint.

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Election Finance and that they had made their best efforts to do so. Id.

Based upon the premise that their expenditures were independent, the Forum respondents admitted that they failed to properly submit a Schedule E for the 1994 July Quarterly Report and attached to the response an amended Schedule E that was properly certified. Id. In a subsequent response, the Forum respondents further admitted that they failed to file the required 24-hour reports for certain independent expenditures in regard to the Hardy tabloids totaling \$22,738.81 and attached to the response a copy of the 1994 July Quarterly Report. See Attachment 3.

In responding to the amendment, the Forum respondents specifically denied each allegation regarding the coordinated distribution of the Lewis tabloid. See Attachment 5. The Forum respondents asserted that they "did not at any time, personally or by agent, contact any candidate." Id. at 1. More specifically, the Forum respondents asserted that they "did not engage, request, facilitate, or even permit Richard Lewis or any agent of his to have any involvement in the distribution of Respondent's materials." Id.

b. Lewis for Congress Committee

On behalf of himself and the Lewis Committee, Mr. Lewis specifically denied each allegation contained in the amendment, which only alleged coordination with respect to the distribution of a particular tabloid. See Attachment 6. Mr. Lewis asserted that the expenditures made in publishing the Lewis tabloid were

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independent expenditures by the Forum, rather than in-kind contributions to the Lewis Committee, and further that there was no coordination in regard to its distribution to the general public. Additionally, Mr. Lewis provided sworn affidavits from four individuals -- Omer L. Chesser, a campaign volunteer; Robert C. Wallace, the campaign publicist; Ed Parker, the campaign chairman; and Doug Lewis, Mr. Lewis' brother -- all swearing that the Lewis tabloid was not distributed with the knowledge or approval of the Lewis Committee.⁵

C. Analysis and Discussion

1. Coordinated Expenditures

Although those respondents who addressed the specific allegations of coordinated activity contained in the complaint denied engaging in the alleged conduct, this Office has additional information pertaining to possible conduct not addressed by complainant which appears to indicate that Dr. Simon may have coordinated with both the Hardy and Lewis campaigns in an effort to defeat Congresswoman Stokes. Attached to the original complaint were copies of reports filed with the State of Kentucky, one of which indicated that the Forum at one time had been called the Christian Coalition PAC.⁶ In the context of MUR 3669, this

5. Mr. Ross, in his capacity as treasurer of the Lewis Committee, stated in a separate response that he had no knowledge of the Lewis tabloid. See Attachment 7.

6. According to filings with the Kentucky Registry of Election Finance, Dr. Simon originally founded a political action committee in 1987 named the Legislative Research PAC. Dr. Simon was reported as its treasurer and sole contributor. In 1988, Dr. Simon changed the name of his committee to the American Coalition for Traditional Values PAC, and remained its treasurer

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Office was already investigating allegations concerning possible involvement by the Christian Coalition in certain federal elections in Kentucky. In the course of reviewing newspaper articles in order to find information about the Forum's use of the name "Christian Coalition", and in that context any possible links with the respondents in MUR 3669, this Office discovered a series of articles reporting on Dr. Simon and the Forum's involvement in the Republican primary and the general elections of 1994 in the 3rd Congressional District of Kentucky. See Attachment 8. Since this information was obtained after the complaint was filed, respondents in this matter have not had an opportunity to address the newspaper articles themselves.

These articles suggest that Dr. Simon was not satisfied with Republican Congresswoman Stokes because she was a pro-choice candidate. The articles state that Dr. Simon and his Forum published a tabloid entitled "The Loyal Republican" which criticized Congresswoman Stokes for accepting contributions from traditionally Democratic donors because she was a pro-choice

(Footnote 6 continued from previous page)
and sole contributor. In 1990, Dr. Simon again changed the name of his committee to the Christian Coalition PAC. While Dr. Simon remained its treasurer, the committee began to receive other unitemized contributions.

Finally, in 1990, Dr. Simon changed the name of his committee to the Freedom's Heritage Forum. At this time, Dr. Simon listed another individual as treasurer of the committee and hundreds of unitemized contributions were reported. The Forum filed a statement of organization with the Commission in October of 1992 and requested termination in December of 1992, which was granted. The Forum filed another statement of organization with the Commission in March of 1993, and has been filing reports with the Commission since then. According to the Forum's filings with the Kentucky Registry of Election Finance, no federal activity took place between December of 1992 and March of 1993.

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candidate. See Attachment 1 at 1-2. Several articles describe Dr. Simon's opposition to abortion and his attempt to gain control of the local GOP committee in order to field a pro-life candidate. See Attachment 8 at 3-4. Having failed in this effort, the articles suggest that Dr. Simon then recruited Timothy Hardy to run as the pro-life candidate in the GOP primary against Congresswoman Stokes. The articles further suggest that after his candidate lost to Congresswoman Stokes in the primary, Dr. Simon subsequently recruited Richard Lewis, a former campaign worker of the Hardy Committee, to be an independent pro-life candidate in the general election. Finally, the articles suggest that Dr. Simon used the resources of the Forum to make certain expenditures in cooperation with and in support of the Hardy and Lewis campaigns.

Although the complaints alone provide little documentation to support the allegations of coordination contained therein, the articles raise serious questions about the possibility of coordinated activity other than that alleged in the complaint between the Forum and the Hardy and Lewis Committees, which this Office believes merit further inquiry. For instance, on May 25, 1994, an article in The Courier-Journal concerning the Republican primary highlighted the close cooperation between the Forum and the Hardy campaign, stating:

Hardy made no bones about his association with conservative causes and groups such as the Freedom's Heritage Forum, headed by physician Frank Simon. Hardy claimed he was in the mainstream of local Republicans while the more liberal Stokes was outside it. Hardy's campaign

director, Corley Everett, said Simon's Heritage Forum not only endorsed Hardy but also gave him \$500 and did at least one mass mailing on his behalf. Simon said his forces worked phone banks Monday night and yesterday trying to get out the Hardy vote.

Other articles discuss the importance and extent of support that the Forum gave to the Hardy campaign. For instance, on May 18, 1994, an article in The Courier-Journal stated that "Hardy's lesser-financed campaign has used mail too, but the main boost came from Freedom's Heritage Forum, a political action committee headed by Dr. Frank Simon. Hardy said a Simon worker told him that 'somewhere around 25,000' copies of a flier titled 'The Loyal Republican' were mailed." See also, Attachment 1 at 1-2. More specifically, on July 28, 1994, an article in The Courier-Journal reported that "Hardy was helped by Frank Simon, a well-known opponent of abortion and gay rights. Simon's group, Freedom's Heritage Forum, reported spending \$27,087, most of it to help Hardy. Hardy's campaign raised \$19,018."

These newspaper articles suggest that Mr. Hardy himself may have been aware of the nature of the Forum's expenditures on his campaign's behalf. Indeed, the fact that the articles report on Dr. Simon's recruitment of Mr. Hardy would appear to have required personal contact between the Forum and Mr. Hardy. Moreover, the articles suggest that Mr. Hardy not only endorsed the support he was receiving from the Forum but also referenced a conversation he had with Forum workers. According to Commission records, the Forum disclosed on the July Quarterly Report \$22,738.81 in

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independent expenditures made in support of the Hardy campaign.⁷ Under the Act, the Forum is permitted to make a maximum contribution of \$1,000 to a candidate per election. 2 U.S.C. § 441a(a)(1)(A). Assuming that the allegations of coordination are true, then it appears that the Forum may have knowingly made an excessive contribution in the amount of \$21,738.81 to the Hardy Committee and that Mr. Hardy, in his capacity as a candidate, and the Hardy Committee may have knowingly accepted such excessive contributions.

After Hardy's defeat in the primary, several articles reported on Dr. Simon's recruitment of Richard Lewis to run as the pro-life independent candidate in the general election. For instance, on July 28, 1994, an article in The Courier-Journal stated: "After Hardy's defeat, Simon encouraged Lewis, the independent, to get into the race. Lewis, an unemployed former Republican who worked in Hardy's campaign, was one of the three GOP opponents Stokes defeated two years ago." On September 21, 1994, another article in The Courier-Journal reported that "Simon, a leading foe of abortion and gay rights, is a major backer of Lewis. He encouraged Lewis to get in the race after Simon's candidate in the Republican primary, Tim Hardy, lost to Stokes." Finally, on November 13, 1994, an article in The Courier-Journal reported that:

[T]he ardent social conservatives who make up the party's right wing say they can't support candidates who tolerate abortion. 'We'll never agree to shedding innocent blood,' said

7. Dr. Simon also personally contributed \$900 to the Hardy Committee for the primary election.

Dr. Frank Simon, the Republican physician who recruited Richard Lewis to run as an independent because Susan Stokes supports abortion rights.... The key, [Donna Shedd, local GOP executive committee member] said, is not to get Simon to support every Republican candidate; just to keep him from creating opposition. Shedd said she did everything she could to talk Simon out of recruiting an independent candidate in the 3rd District race. She was unsuccessful, she said, because Stokes wouldn't give even an inch to social conservatives.

These newspaper articles suggest that Mr. Lewis himself may have been aware of the nature of the Forum's expenditures on his campaign's behalf. Indeed, the fact that the articles report on Dr. Simon's recruitment of Mr. Lewis would appear to have required personal contact between the Forum and Mr. Lewis. Moreover, in a telephone conversation with this Office, Mr. Lewis acknowledged that he knew Dr. Simon and was aware of the activities of the Forum. According to Commission records, the Forum disclosed on the October Quarterly Report \$1,000 in independent expenditures made in support of the Lewis campaign.⁸ It appears, however, that the Forum may have made additional expenditures on behalf of the Lewis Committee but failed to report them as such. After having been notified of the complaint, it appears that the Forum may have altered its reporting pattern. Instead of itemizing its expenditures as independent, as it previously had done, the Forum began reporting its expenditures as "Other Federal Operating Expenditures" even though they were identified by the Forum as

8. Dr. Simon and his spouse, furthermore, each personally contributed \$1,000 to the Lewis Committee for the general election.

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having been made for the purpose of the general election. For instance, on the 12-Day Pre-General and 30-Day Post-General Election Report respectively, the Forum disclosed \$818.50 and \$4,973.10 in "Other Federal Operating Expenditures" made for the general election. This Office believes it is possible that these disbursements were made in support of the Lewis Committee and in opposition to Congresswoman Stokes, as was customarily done by the Forum. Indeed, no expenditures had been reported by the Forum in this manner prior to it having been notified of the complaint. Accordingly, it appears that the Forum may have made expenditures totaling \$6,791.60 in support of the Lewis campaign. Under the Act, the Forum is permitted to make a maximum contribution of \$1,000 to a candidate per election. 2 U.S.C. § 441a(a)(1)(A). Assuming that the allegations of coordination are true, then it appears that the Forum may have knowingly made \$5,791.60 in excessive contributions to the Lewis Committee and that Mr. Lewis, in his capacity as a candidate, and the Lewis Committee may have knowingly accepted such excessive contributions.

In addition to the newspaper articles, other information appears to further support the allegations of coordination contained in the complaint. According to reports filed with the Commission, the Forum made several expenditures that were identified as solely for the purpose of opposing Congresswoman Stokes and supporting Mr. Hardy and Mr. Lewis, even though there were other candidates running in both the primary and general

elections.⁹ Moreover, it appears that Mr. Lewis was a former campaign worker of the Hardy Committee and that Mr. Ross served as treasurer of both campaigns.

Since the newspaper articles were not attached to the complaint, respondents have not had an opportunity to address the events as reported in the articles. In addition, the response of the Forum to the original complaint failed to specifically address the allegations of coordination in regard to the Hardy tabloid, instead focusing upon the technicalities of the reporting and disclaimer violations. Although the response of the Forum to the amendment did deny the allegations of coordination with respect to the Lewis tabloid, other questions concerning possible coordination remain as a result of the articles. Finally, this Office notes the absence of a denial from the Hardy Committee and the failure of Mr. Ross to respond to the original complaint in his capacity as treasurer of the Hardy Committee when he responded to the amendment in his capacity as treasurer of the Lewis Committee.

Thus, in light of the purported events described in the articles, this Office believes that further inquiry is warranted in this matter.

since respondents in this matter have not had an opportunity to respond to the allegations of coordination as more fully developed in the articles, this Office recommends that the

9. This Office also notes that Dr. Simon personally contributed to both campaigns.

Commission make a finding of reason to believe and permit them the opportunity to respond to the Factual and Legal Analyses and newspaper articles.

Accordingly, this Office recommends that the Commission find reason to believe that the Freedom's Heritage Forum and Arthur A. Cerminara, as treasurer, violated 2 U.S.C. § 434(b) by improperly reporting certain contributions as independent expenditures and insufficiently identifying the purpose of the expenditures. This Office further recommends that the Commission find reason to believe that the Freedom's Heritage Forum and Arthur A. Cerminara, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions in the amount of \$21,738.81 to the Hardy Committee and \$5,791.60 to the Lewis Committee.

This Office also recommends that the Commission find reason to believe that the Hardy for Congress Committee and Bob Ross, as treasurer, and the Lewis for Congress Committee and Bob Ross, as treasurer, violated 2 U.S.C. § 434(b) by failing to report contributions from the Forum, and 2 U.S.C. § 434(a)(6)(A) by failing to file 48-hour reports for some of those contributions.

This Office also recommends that the Commission find reason to believe that the Freedom's Heritage Forum and Arthur A. Cerminara, as treasurer, the Hardy for Congress Committee and Bob Ross, as treasurer, and the Lewis for Congress Committee and Bob Ross, as treasurer, violated 2 U.S.C. § 441a(f) in that the Forum knowingly made and the Hardy and Lewis Committees knowingly accepted excessive contributions. This Office further recommends that the Commission find reason to believe that Timothy Hardy and

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Richard Lewis, in their individual capacities as candidates, violated 2 U.S.C. § 441a(f) in that they each knowingly accepted excessive contributions from the Forum.

Although the complaint specifically names Dr. Simon as a respondent in this matter, the Act does not impose personal liability upon the directors and officers of political committees. Accordingly, this Office recommends that the Commission find no reason to believe that Frank G. Simon, M.D., violated any section of the Act.

2. Reporting Violations

In addition to the violations arising out of the alleged coordinated expenditures, it appears that the Forum may have violated several other reporting requirements of the Act. If the Commission determines that the expenditures of the Forum were in fact independent rather than coordinated, then the Forum respondents, by their own admission, violated several provisions of the Act.¹⁰ Indeed, based upon the premise that their expenditures were independent, the Forum respondents admit to having failed to certify on Schedule E of the 1993 July Quarterly Report that the expenditures were not made "in cooperation, consultation or concert with, or at the request or suggestion of any candidate or any authorized committee or agent thereof".

10. The nature of the reporting violations by the Forum respondents will depend upon whether the Commission determines that the expenditures of the Forum were coordinated, as alleged in the complaint, or independent, as maintained by these respondents. In either situation, it appears that the Forum may have committed several reporting violations. Thus, this Office is recommending the following alternative findings.

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See Attachment 2. The Forum respondents further admit to having failed to file 24-hour reports for these expenditures.

See Attachment 3. Thus, this Office recommends as alternative findings that if the expenditures were independent then the Commission find reason to believe that the Freedom's Heritage Forum and Arthur A. Cerminara, as treasurer, violated 2 U.S.C. § 434(c) by failing to certify Schedule E of the 1994 July Quarterly Report and by failing to report certain independent expenditures within the required 24-hour period.

The complaint also alleges, regardless of whether the expenditures were independent or coordinated, that the Forum failed to itemize any contributions that it had received during the reporting period covering the 1994 July Quarterly Report. Yet according to its own report, the Forum had received contributions totaling in excess of \$12,000.¹¹ In response, the Forum maintained simply that it was not required to itemize its contributions "because no reportable contribution was received."

See Attachment 2. Apparently, the Forum claims to have only received contributions less than the \$200 itemization threshold imposed by the Act.¹² Given the large number of contributions that

11. Indeed, Commission records indicate that prior to receiving notice of the complaint the Forum had never itemized any of the contributions that it had received since its statement of organization was first filed with the Commission, and yet it had received contributions totaling in excess of \$55,000.

12. In fact, according to its filings with the Kentucky Registry of Election Finance, it appears that prior to receiving notice of the complaint the Forum had never received a contribution other than from Dr. Simon greater than the \$100 itemization threshold imposed by Kentucky State law.

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the Forum has received over the years, this Office believes that it is unlikely that the Forum has never received a single contribution greater than \$200. Accordingly, this Office recommends that the Commission find reason to believe that the Freedom's Heritage Forum and Arthur A. Cerminara, as treasurer, violated 2 U.S.C. § 434(b) by failing to itemize their receipts.

The complaint further alleges that the Forum failed to file copies of certain reports and statements with the State of Kentucky that were required by the Act. This Office contacted the Kentucky Registry of Election Finance with regard to this matter, and they verified orally that all required reports and statements were filed by the Forum. Thus, it does not appear that the Forum failed to file any reports and statements with the Kentucky Registry of Election Finance that were required by the Act.

3. Disclaimer Violations

Finally, the complaint alleges that the Forum failed to place the proper disclaimer notice on its Hardy tabloids. Under the Act, all communications from a political committee that expressly supports or opposes a clearly identified candidate must contain a disclaimer that both states who paid for the communication and whether or not it was authorized by any candidate or principal campaign committee of the candidate. 2 U.S.C. § 441d(a). The disclaimers on the Hardy tabloids only state that they were paid for by the Forum and not whether they

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were authorized by any candidate or campaign committee.¹³ In the course of preparing this report, this Office discovered that the Forum similarly failed to state on its Lewis tabloid whether or not it was authorized by any candidate or campaign committee, and therefore it too failed to meet the requirements of the Act. Thus, this Office recommends that the Commission find reason to believe that the Freedom's Heritage Forum and Arthur A. Cerminara, as treasurer, violated 2 U.S.C. § 441d(a)(3) by failing to include the appropriate disclaimer in each of the Hardy and Lewis tabloids.

13. The Forum respondents argue that the disclaimers complied with 11 C.F.R. § 110.11(a)(1)(iv). This argument, however, is not on point for that regulation refers only to "solicitations" directed to the general public and not to "communications" expressly advocating the election or defeat of a clearly identified candidate. Since the Hardy and Lewis tabloids were not solicitations, they were required to state both who paid for them and whether or not they were authorized by any candidate or campaign committee.

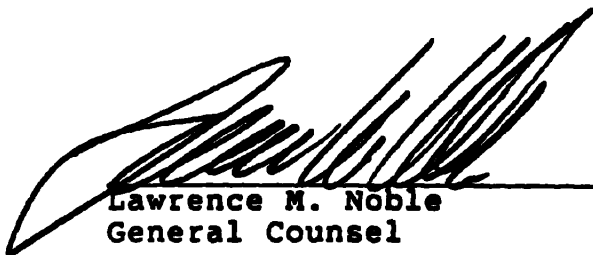
IV. RECOMMENDATIONS

1. Find reason to believe that the Freedom's Heritage Forum and Arthur A. Cerminara, as treasurer, violated 2 U.S.C. §§ 434(b); 434(c); 441a(a)(1)(A); 441a(f) and 441d(a)(3).
2. Find reason to believe that the Hardy for Congress Committee and Bob Ross, as treasurer, violated 2 U.S.C. §§ 434(a)(6)(A); 434(b) and 441a(f).
3. Find reason to believe that Timothy Hardy violated 2 U.S.C. § 441a(f).
4. Find reason to believe that the Lewis for Congress Committee and Bob Ross, as treasurer, violated 2 U.S.C. §§ 434(a)(6)(A); 434(b) and 441a(f).
5. Find reason to believe that Richard Lewis violated 2 U.S.C. § 441a(f).
6. Find no reason to believe that Frank G. Simon, M.D., violated any section of the Act and close the file as to this respondent.
7. Approve the attached Factual and Legal Analyses and appropriate letters.

Date

6/23/95

Lawrence M. Noble
General Counsel



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Attachments:

1. Hardy tabloids
2. First Response to Complaint from:
Freedom's Heritage Forum,
Arthur A. Cerminara, as treasurer, and
Frank G. Simon, M.D.
3. Second Response to Complaint from:
Freedom's Heritage Forum,
Arthur A. Cerminara, as treasurer, and
Frank G. Simon, M.D.
4. Amendment to Complaint
5. Response to Amendment from:
Freedom's Heritage Forum,
Arthur A. Cerminara, as treasurer, and
Frank G. Simon, M.D.
6. Response of Lewis for Congress Committee
7. Response of Bob Ross, as treasurer of the Lewis Committee
8. Newspaper articles from The Courier-Journal
9. Factual and Legal Analyses (5)

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